IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2073 OF 2005

MOHD. SHARABATALI SHAIKH & ANR. PETITIONERS

Versus

P. K. BALATKAR & ORS. RESPONDENTS

Mr. M. V. Holamagi for petitioner

Ms. Teja Katdare for R-2

Ms. A.S. Pai, APP

CORAM:-SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED:- 15/01/2007

P.C.

. In this petition, the petitioners have prayed that action taken by the respondents pertaining to C.R. No. 111/05 be declared unjustified and unwarranted. The petitioners have also prayed that direction be given to the respondents to pull down and demolish unauthorised construction which is described in the present petition. It is further prayed that respondents 3 to 7 be directed to take action under Maharashtra Regional Town Planning Act ("MRTP Act" for short) and Indian Penal Code ("IPC"

for short) regarding alleged unauthorised construction and enquiry may be directed to be held against the B.M.C. officers and police officers.

2. So far as C.R. No. 111/05 is concerned, we are informed by the learned APP that charge-sheet is already filed. If that is so, we are not inclined to interfere with the same. However, the petitioners will be at liberty to approach the learned Magistrate for any relief which is open to them in law and the learned Magistrate shall deal with the petitioner's application in accordance with law. We have not expressed any opinion on the petitioner's grievance about the said case.

3. So far as the prayer that respondents be directed to pull down and demolish the unauthorised structure and the prayer that respondents 3 to 7 be directed to take action under Maharashtra Regional and Town Planning ("MRTP" for short) Act and I.P.C. is concerned, we find that an affidavit-in-reply is filed on behalf of respondents 4 to 7 by one Shri Janardan Vitthal Kadam, Sub-Engineer with Mumbai Municipal Corporation. In the affidavit it is stated that as per procedure notice under Section 351 of the Mumbai Municipal Corporation Act is

issued to one Ali Ahmed Chaudhari. It is further stated that after the said Ali Ahmed Chaudhari has produced photo pass standing in the name of the previous owner regarding the authorization of the said structure, the question was referred to the Additional Collector (Encroachment) Mumbai, for verification and report and the said report is still awaited.

3. Therefore, it is apparent that the allegation of unauthorised construction is being investigated. We expect the Corporation officials to ensure that the report from the Additional Collector (Encroachment) is obtained expeditiously.

4. Smt. Teja Katdare, the learned counsel for respondents 4 to 7 states that, if after investigation it is disclosed that any unauthorised construction is in fact carried out, action will be taken in accordance with law. We hope and trust that in fact if any unauthorised construction is carried out, the respondents will take action in accordance with law.

5. The petitioner has made some allegations against certain police officers. However, we find

that there is no specific prayer with regard to those allegations. In that behalf, if any remedy is open to the petitioners in law, the petitioners may adopt it. We have not expressed any opinion on that aspect.

6. The petition is disposed of in the aforestated terms.

JUDGE

JUDGE